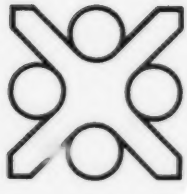
# TENTH ANNUAL REPORT

# OF THE

# PRINCE EDWARD ISLAND
# HUMAN RIGHTS COMMISSION

1986



**HUMAN RIGHTS COMMISSION**

PRINCE EDWARD ISLAND

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The Honourable Wayne D. Cheverie, Q. C.
Minister Responsible for Human Rights
Province of Prince Edward Island

Sir:

We are privileged to submit to you, the Minister Responsible for Human Rights within the Province of Prince Edward Island, the Tenth Annual Report of the Prince Edward Island Human Rights Commission for the calendar year ending December 31, 1986.

Respectfully submitted,

J. Leo Trainor
Chairperson

The four symmetrical bodies of the logo, round heads and outstretched arms, represent the function of the P.E.I. Human Rights Commission — the protection of the human rights of the individual, as an individual and as a part of society. The outstretched limbs also represent the varying channels used by the Commission to reform, educate, and respond to complaints of individuals and groups.

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## CHAIRPERSON'S REMARKS

It is with pleasure that we present the Tenth Annual Report of the P. E. I. Human Rights Commission for the calendar year 1986. It is an anniversary report, reflecting the origin, growth and problems experienced by the Commission in the first decade of its existence. The statistics document a dramatic increase over the decade in the number of complaints filed with the Commission as well as the number of inquiries directed to the Commission's staff. This indicates not only a growing awareness by Islanders of their rights, but also reflects on how the Commission is perceived by the public as an invaluable instrument in their search for justice and the protection of their rights. We believe this is the result of the work of the nine Commissioners who have served on the Commission since its inception, and is a public acknowledgement of the fairness, accessibility, impartiality and commitment of all those Commissioners in seeking to administer the Human Rights Act for the benefit of all Islanders.

As we begin the second decade, we realize the increasing importance of maintaining the high standards developed during the past decade. The challenge will be greater and more demanding, but we believe a commitment to the basic principles of human rights will serve the Island people as well in the coming years as it has in the past ten years.

## COMMENTS OF THE OUTGOING CHAIRPERSON

Allan F. MacDonald's Comments Upon the Termination of His Six Years as The Commission's Chairperson:

At the end of six years and my final term as Chairperson of the P. E. I. Human Rights Commission, I wish to offer some comments on the present and future status of the Commission.

Those six years have witnessed a constant development and advancement in human rights jurisprudence both in its theoretical and judicial aspects. Noteworthy in these developments was the 1981 decision of the Supreme Court of Canada that all complaints of discrimination under human rights codes must be adjudicated by Human Rights Commissions. Therefore, the ordinary means of recourse for citizens against acts of discrimination is the Human Rights Commission. In effect, the Provincial and Federal Human Rights Commissions constitute an integral part of the justice system in this country.

In substance, while human rights legislation and procedure constitute an entity distinct from civil and criminal law, it takes its place along with these in the Canadian justice system. And, it must be observed here, people have the right to seek from their human rights commissions the same quality of performance that they look for in the civil and criminal branches of justice.

The Human Rights Commission in our system is entrusted with serious and demanding responsibilities. These are to administer the Provincial Human Rights Act by adjudicating complaints of discrimination and by promoting education in human rights. These responsibilities brook no options. A Human Rights Commission must accept and adjudicate within a reasonable time all complaints of violations of the Human Rights Act.

In all human rights cases the time factor is of the utmost importance. Most cases pertain to employment - alleged discrimination in hiring, on the job, or in termination of employment. It follows that people filing complaints are people without jobs and in straitened circumstances. Obviously, any delay in the adjudication of complaints

contributes to deprivation and hardship. In addition, the very nature of some complaints requires that the investigation proceed without delay.

Each year in the 1980's has seen an increase in the number of complaints brought to this Commission. This increase has continued through 1986 so that the present caseload of the P. E. I. Commission is about three times the capacity of the Commission staff.

I reflect on these matters because the public, our citizens, have a right to know how well their rights are protected. Since the Commission is their only recourse against discrimination, their only protection in these areas of law, it is imperative that it be budgeted sufficiently to provide the staff and facilities for the prompt and complete servicing of complaints and public needs.

On a less mundane, but no less important level, the past years have been ones of accelerated discussion and inquiry into human rights propositions. The new Constitution and Charter have made for this. Unquestionably, the future has in store a further need for public argument and dialogue on the fundamental rights of persons.

Over the past years, the contribution of P. E. I. on this theoretical level has not been insignificant. The pioneer work of this Commission in the areas of alcoholism and sex discrimination in sport have made for significant advances.

A unique Island advance in human rights has been the inclusion of political belief in the Provincial Act. This was a product of the vision and commitment to justice of our legislators of all political parties. Over the years notable advances on this level have been made. Increasingly, media persons and other commentators have been bringing out the demeaning and degrading aspects of political patronage and the attack on competence and ability which it constitutes. And, to an even greater degree, there is a public revulsion against some of the patronage practices of the past. In this area, P. E. I. leads the fight against this form of injustice. It is to be hoped that the future will witness its further elimination. The initiatives being undertaken at present point to this. Every support should be given by all citizens, by the Civil Service, by all members of all political parties to our elected representatives to eliminate political discrimination from our province.

# THE P. E. I. HUMAN RIGHTS ACT

## A TEN-YEAR REVIEW

1986 marks the tenth anniversary of the effective date of the P. E. I. Human Rights Act. The Act was assented to by the Provincial Legislature on December 21, 1975 and proclaimed effective as of September 11, 1976. The Act became the paramount law of the Province on September 11, 1979, three years from the date of its proclamation. The three year period was designed to permit the Government to bring all its Acts and Regulations into conformity with the Human Rights Act.

The Act was first amended in 1977 to repeal all previous human rights codes, including those of 1968 and 1974. In 1980 the Act was amended to prohibit discrimination based on physical disability and age in the areas of access to services, accommodations and facilities as well as in employment. In 1982 the Act was amended to permit the Minister Responsible for Human Rights to direct that a Board of Inquiry be held "in camera" where it was deemed that the holding of a public inquiry would not serve the public interest. In 1984 the Legislature amended the Act to exempt discrimination because of age in access to services, facilities and accommodations where a Provincial Act specifically defines age limitations in access to these services. 1985 witnessed the amending of the Act to bring it into conformity with the Charter of Rights and Freedoms. This was accomplished by removing the definition of age (18-65) and by adding mental handicap to the Act as a proscribed ground of discrimination. The Act was also amended in 1985 to exempt the Commission's employees from the Civil Service Act, thereby placing the employees of the Commission under the jurisdiction of the Commission.

In November of 1986 the Provincial Government applied to the Supreme Court for an interpretation of "political Belief" discrimination as it is defined in the P. E. I. Human Rights Act. In addition, the Government requested that the Supreme Court interpret those sections of the Human Rights Act which relate to the appropriateness of the procedure used by the Human Rights Commission in disposing of complaints. The

Supreme Court will hear the Government's request in 1987.

The P. E. I. Human Rights Act is not a part of the Criminal Code nor is the Commission a court of law with the authority to impose a settlement in complaints filed with the Commission. The Commission's duty, as defined in the Human Rights Act, is to investigate and attempt to settle all complaints filed under the Act. If the Commission is unable to accomplish this, a report is forwarded to the Minister Responsible for Human Rights who has the authority to convene a public board of inquiry to hear the complaint. The Commission, however, is a party to any complaint coming before a board of inquiry.

The aim of the Act is the elimination of discrimination within the Province and, although the terms "human rights" and "discrimination" encompass a wide variety of rights, the Human Rights Act prohibits discrimination in only a limited number of areas and for a limited number or reasons. The Act protects Island residents from discrimination in four areas - in employment and in access to services, accommodations and facilities - because of race, religion, creed, colour, sex, marital status, national or ethnic origin, physical or mental handicap, age and political belief. The Act also prohibits discrimination in pay by defining what constitutes equal pay for individuals who are doing essentially the same work.

## THE P. E. I. HUMAN RIGHTS COMMISSION
## A TEN-YEAR REVIEW

The P. E. I. Human Rights Commission, as mandated by the Human Rights Act, is composed of three Commissioners, with one of the Commissioners designated as Chairperson. Each Commissioner is appointed for a three-year term and may be reappointed by the Lieutenant Governor in Council. The terms of the three Commissioners are staggered so that the term of office of only one Commissioner expires in any given year. Increasingly, Commissioners are being reappointed for a second three-year term to provide the Commission with a greater continuity and the use of a Commissioner's experience and expertise gained during the term of the first three-year appointment.

Nine Commissioners have served on the Commission during this first decade of the Commission's existence. They are as follows:

1976-79: James R. Kelly, Charlottetown, Professor, University of Prince Edward Island, Chairperson 1976-79.

1976-78: Bea Mair, Georgetown, educator, Holland College. Bea Mair acted as Administrative Assistant for the Commission in 1979.

1976-80: Paul J. D. Mullin, Charlottetown, lawyer, Chairperson 1979-80.

1978-81: Ruth MacLeod VanIderstine, Orwell, homemaker.

1979-85: Kenneth Birtwistle, Charlottetown, Executive Director, United Way.

1980-86: Allan F. MacDonald, Glenfinnan, Professor, University of Prince Edward Island. Chairperson 1980-86.

1981- Ruth MacLeod, Montague, retired Superintendent of Business Affairs for Regional School Unit Four.

1985- Richard Noonan, Summerside, Assistant Superintendent for Regional School Unit Two.

1986- J. Leo Trainor, Hope River, Parish Priest. Appointed Chairperson December, 1986.

Commissioners for the Year 1986

Allan F. MacDonald, Chairperson, Glenfinnan,
January - September, 1986

Father MacDonald is a sociology professor at the University of Prince Edward Island. Prior to receiving his doctoral degree at the Catholic University of America, he studied at St. Dunstan's University, St. Augustine's Seminary, and the University of Toronto. As Director of Extension at St. Dunstan's he initiated programs in labour relations, social action, and community development. During the decade 1965-1975 he was involved in the formation and direction of the P. E. I. Rural Development Council, later serving as Chairperson. He was the official P. E. I. representative on the Continuing Committee of Federal-Provincial Officials Responsible for Human Rights during his term as Commission Chairperson.

J. Leo Trainor, Chairperson, Hope River,
December, 1986 -

Father Trainor is presently serving the parishes of St. Ann's in Hope River and St. James in Summerfield. Prior to his assignment to these parishes, he served the St. Dunstan's Parish in Charlottetown from 1983 to 1986. During this same period he also served as the Roman Catholic Chaplain of Sleepy Hollow Correctional Centre. Father Trainor received his education at St. Dunstan's University, the University of Prince Edward Island, and Memorial University of Newfoundland. Prior to studying at St. Augustine's Seminary in Toronto, Father Trainor was employed with the Federal Governmnet in Toronto and taught high school in Newfoundland. He received his Master of Divinity degree from St. Augustine's Seminary in 1983 and was ordained to the priesthood the same year in the Diocese of Charlottetown. Father Trainor if the official representative for P. E. I. on the Continuing Committee of Federal-Provincial Officials Responsible for Human Rights.

Ruth MacLeod, Commissioner, Montague,
January - December, 1986

Ruth MacLeod served as Superintendent of Business Affairs for Regional Administrative School Unit Four until her retirement in 1979. She is currently the Secretayy-Treasurer of Montague Christian Church;

she has been an active member of the King's County Hospital Ladies' Auxiliary; she is a Past President of the Montague Home and School Association and the Provincial Women's Progressive Conservative Association. She has also been active in various community projects such as Community Schools and a community choir.

Richard Noonan, Commissioner, Summerside,
January - December, 1986

Richard Noonan received his B. A. from St. Dunstan's University, his B. Ed. from St. Francis Xavier University and his Dip. Ed. from the University of New Brunswick. Mr. Noonan has participated in a wide variety of civic and community activities, has served on a number of boards and held office in national organizations. Mr. Noonan has been a teacher, Vice Principal and Principal of Summerside High School. He is currently the Assistant Superintendent of Regional Administrative School Unit Two, a member of the School Administrators of P. E. I. and the Canadian Association of School Administrators.

## THE HUMAN RIGHTS COMMISSION STAFF
## A TEN-YEAR REVIEW

1978-79: Mark Arnold, part-time Administrative Assistant

1978-79: Leah Clearwater, part-time Secretary

1979: Bea Mair, part-time Administrative Assistant

1979-84: Sherry Finley, full-time Administrative Officer

1979- : Thomas Klewin, Executive Director,
1979-84: half-time
1984- : full-time

1984-86: Jewel MacDonald, full-time Research/Intake Officer

1986- : Frances Piercey, full-time Research/Intake Officer

## MINISTERS RESPONSIBLE FOR HUMAN RIGHTS
## A TEN-YEAR REVIEW

During the decade of its existence the P. E. I. Human Rights Commission has reported to six different Ministers designated as the Minister Responsible for Human Rights. With the appointment of the Honourable Horace Carver as Minister Responsible for Human Rights, the Human Rights Commission has become an extension of the Justice Department, responsible for administering that part of the legal system through which complaints alleging discrimination must be processed. The following Ministers have been responsible for human rights in Prince Edward Island and for the Human Rights Commission since 1976:

1976-78: The Honourable George R. Henderson, Minister of Labour

1978-79: The Honourable George A. Proude, Minister of Labour

1979-80: The Honourable Barry R. Clark

1980-81: The Honourable Horace B. Carver, Q. C., Minister of Justice

1981-86: The Honourable George R. McMahon, Q. C., Minister of Justice

1986- : The Honourable Wayne D. Cheverie, Q. C., MInister of Justice

## OFFICE LOCATIONS

1976-79: 141 Kent Street, Charlottetown

1979- : 180 Richmond Street, Charlottetown

## THE ROLE OF THE COMMISSION
## A TEN-YEAR REVIEW

The daily administrative work of the Commission is the responsibility of the Commission's staff. This includes responding to inquiries from the public, investigating formal complaints, answering correspondence, maintaining Commission files, researching human rights precedences, advising government agencies and private businesses and preparing materials for the Commissioners' consideration. Policy formulation, news releases, budgetary submissions, making a determination or finding on a formal complaint, acting as a conciliator in settlement procedures, maintaining liason with the Minister Responsible for Human Rights and supervising the Commission's staff are the primary responsibilities of the three Commissioners. During the past decade the Commission's role in dealing with issues, policies and procedures has grown in proportion to the annual increase in the Commission's workload. Each year has witnesses the Commission's expansion into new areas of human rights activities.

### Highlights of the Decade

1976 The first Commission meeting: September 9, 1976.

1977 The first annual report incorporated into the annual report of the Department of Labour.

The first employment application form reviewed by the Commission.

1978 The first political belief complaint accepted. A policy was developed in 1978 to determine what constitutes political belief.

The first board of inquiry was convened under the Human Rights Act.

The Commission's logo was adopted from a competition held to design a suitable logo for the Commission.

The first staff persons were hired by the Commission, consisting of an administrative assistant to work approximately fifteen hours per week for the Commission and a part time secretary to provide additional office and telephone coverage for the Commission.

1979 The first full-time staff person was secured for the Commission. A civil service administrative officer was provided the Commission on a five-day-a-week basis.

The first Executive Director was hired on a part-time basis of 20 hours per week.

Guidelines for Pre- and Post-Employment Inquiries were prepared and issued by the Commission.

The first separate annual report was prepared by the Commission.

Five political belief complaints were accepted by the Commission utilizing the guidelines developed in 1978.

1980 The Commission's complaint caseload increased to include 20 complaints, 13 relating to political belief discrimination in employment and 7 to other types of complaints.

The Act was amended to place physical disability and age into all areas of discrimination including access to services, facilities and accommodations.

The Pre- and Post- Employment Guidelines were revised.

The Commission handled three new areas of discrimination: colour, religion, and equal pay for equal work.

1981 The Commission presented a brief concerning historical human rights as they related to a proposed Addiction Services Act.

The Commission developed a policy that access to an educational institution, that is, to the facility itself, was to also include access to an education. This means all classes will have to be made accessible to a handicapped student.

The Commission developed a series of 45 information sheets relating to the Human Rights Act.

The Commission accepted its first complaint based on sexual harassment and in the process developed guidelines for investigating these types of complaints.

The Commission dealt with three new areas of discrimination in complaints received: physical disability/access to an education; age/employment; sexual harassment/employment.

1982 The Commission accepted a complaint based on the condition of alcoholism as a physical disability and developed a policy statement regarding the condition of alcoholism. It was the first position paper on this issue for a human rights commission in Canada.

1982 The Charles Craig Board of Inquiry was established. It was to adjudicate a complaint based on political belief.

The Commission dealt with three new areas of discrimination in complaints received: ethnic origin/access to accommodations; alcoholism and employment; alcoholism and access to insurance.

1983 The Commission launched a summer project to ascertain the Island population's awareness of their fundamental rights. The research project resulted in a publication titled "Human Rights Awareness in Prince Edward Island."

The Commission appealed the procedure of the Craig Board of Inquiry as well as the Board's definition of "political belief" discrimination.

The Commission developed a policy relating to age, defining age on a functional rather than on a chronological basis.

The Commission dealt with four new areas of discrimination in complaints received: age and sex/access to auto insurance; age/access to a special care facility; marital status/access to an accommodation; pregnancy/employment.

1984 The Commission accepted complaints from four girls alleging sex discrimination in hockey. The Commission produced a policy on "Sex and Amateur Sports" which clearly defined sex discrimination as it relates to both sexes age 12 and under.

A statement was issued noting that the Commission could not legally accept complaints of discrimination because of pregnency as sex discrimination.

A policy on medical examinations as they relate to employment was issued, indicating only current and relevant medical information could be obtained and utilized by the employer.

The Commission issued a position paper on the legal age for drinking as it related to the Human Rights Act.

The Commission expanded the hours of its Executive Director to make the position a full-time one.

Briefings were given to the Provincial "Quality of Life Committee"; to the Premier and to the Department of Labour concerning work-related problems brought to the attention of the Commission; to the Department of Health and Social Services in regard to child protection services and welfare decisions; and to Employment and Immigration Canada concerning the "Special Needs" category within that Department.

The Commission dealt with three new areas of discrimination in complaints received: ethnic origin/employmnet; sex/access to participation in sports; age and sex/access to rental accommodations.

1985 The Act was amended to redefine age discrimination and add mental handicap to the proscribed categories of discrimination.

The Act was also amended to legally place the Commission's staff under the sole jurisdiction of the Commission.

The Commission accepted a complaint based on mandatory retirement at age 65 as prescribed by the Civil Service Act and its first complaint based on "mental handicap". Mental handicap was defined by the Commission as follows:

a. a condition of mental retardation or impairment;
b. a mental or emotional disorder;
c. a learning disability or dysfunction.

The Commission's policy on medical examinations as they relate to employment was expanded to include a statement that physical examination can only be required after an individual has been conditionally accepted for employmnet or entrance into an employment training program.

A policy was developed, in response to a complaint, differentiating between reasonable dress codes for both sexes and discriminatory dress codes which are unequally applied to males and females.

By accepting several complaints relating to foster parenting and adoption, the Commission concluded that all legislation and regulations concerning foster parenting and adoption must be non-discriminatory or meet the "bona fide" requirements of the Human Rights Act.

The Commission also developed a policy clearly defining the difference between financial compensation for lost wages and financial compensation for injury to dignity, emotions and self-esteem in mediating the settlement of complaints.

To meet the dramatic increase in the number of phone calls to the Commission, a toll-free line was established as a second phone line making access to the Commission equally available to all persons in Prince Edward Island.

Formal presentations were again made to the Departments of Labour and Social Services as part of the Commission's mandate to advise government on suggestions, recommendations, concerns and requests made by private organizations and individuals. A presentation was also made to the Parliamentary Committe on Equality.

The Commission also dealt with seven new areas of discrimination in complaints received: age/employment and mandatory retirement; marital status/access to social assistance; age/access to foster parenting; age/access to travel insurance; retaliation for having filed a complaint; employment/association; employment/mental disability.

1986 During 1986 the Commission held eighteen meetings and dealt with the following issues:

The Commission's lawyer represented the Commission at the two public boards of inquiry which were convened and participated in the settlement of a complaint before the third board of inquiry met for a public hearing.

The most crucial issue for the Commission in 1986 was the re-affirmation of the Commission's policy and definition of "political belief" discrimination first formulated in 1978 and formalized in 1980. The Commission re-examined its policy and issued a more comprehensive policy statement of "political belief" discrimination.

A formalized investigative and decision-making process was established by the Commission in the handling of formal complaints.

The Commission reviewed the problems arising from the Family Support Program of the Department of Health and Social Services which restricted access in assistance to families with mentally-handicapped children while excluding families with physically-handicapped children. The Commission proposed to Social Services a more equitable solution to the problem of assisting families with handicapped children.

The Commission hired two temporary investigators to assist the Commission's Executive Director in investigating the many political belief complaints filed with the Commission.

The Commission achieved settlement with Government in three mandatory retirement complaints. The Commission's policy on mandatory retirement applies to both the public and private sectors.

The Commission authorized its legal counsel in the Charles Craig matter to petition the Court to have its appeal of the decision in the Charles Craig Board of Inquiry dropped.

The Commission provided the City of Charlottetown, at its request, with a comprehensive non-discriminatory hiring policy and procedure.

A complaint was accepted based on age, where the complainant alleged he was discriminated against because he was over the age of 18 and the employer would only hire those under 18 because they were eligible for the sub-minimum wage.

The Commission did an extensive review of boards of inquiry procedures and concluded a revision of the Human Rights Act or the drafting of regulations would be the only viable means of permitting the Commission to assume a more effective role in boards of inquiry.

1986 Legal counsel was hired to represent the Commission at the Supreme Court when the Government's application to the Court is to be heard. The application deals with two concerns:

1. The interpretation of "political belief" discrimination;

2. The jurisdiction of the Human Rights Commission in:
   a. making a determination or finding in a complaint,
   b. observing the rules of natural justice and how these rules apply to the Commission's investigation of a complaint.

The Commission dealt with four new areas of discrimination in complaints received: race/employment; marital status/access to crop insurance; religion/employment; age/access to services provided by Social Services.

The Commission forwarded to the Executive Council the following proposals for amendments to the Human Rights Act:

a. that pregnancy be included in the definition of "sex", so that complaints based on pregnancy can be accepted by the Commission;

b. that "family status" be included as a prohibited ground of discrimination;

c. that the Commission be authorized to initiate complaints so that the Commission can investigate systemic discrimination where individuals through fear of reprisal in securing future employment are unable to initiate a formal complaint;

d. that "source of income" be included as a prohibited ground of discrimination.

## FORMAL, SIGNED COMPLAINTS

During 1986 the Commission dealt with one hundred sixty-seven (167) formal complaints, four of which were filed under a multiple discrimination allegation. Of that number, the Commission disposed of 22 of these complaints and began settlement proceedings in an additional six complaints. The disposition of the completed complaints was as follows:

- 2 - Boards of Inquiry/Upheld.
- 1 - Board of Inquiry/settled before formal board hearings began.
- 6 - Settled by the Commission after a conclusion was reached by the Commission that discrimination appeared to have taken place.
- 2 - Withdrawn by complainants when respondents offered to settle prior to the completion of the Commission's investigation.
- 3 - Complaints withdrawn by complainants for personal reasons.
- 8 - Complaints dismissed by the Commission for lack of evidence to indicate discrimination occurred.

The status of the six complaints in the settlement process was as follows:

- 3 - Settlement terms agreed upon by complainants and respondents; memorandums of settlement remained to be signed by both parties.
- 3 - Settlements were still in the process of conciliation by the Commission.

Of the 167 complaints, 30 were carried over from 1985, including 7 political belief complaints filed with the Commission from 1979 to 1984. Three of these political belief complaints were forwarded to the Minister in 1980 for consideration for boards of inquiry.

The Commission will carry over into 1987 one hundred forty-three complaints comprising 101 political belief complaints, 36 non-political belief complaints and 6 complaints in various stages of the settlement process.

The following three tables give a breakdown of the various categories of complaints handled by the Commission in 1986 and over the past ten years.

TABLE 1

Categories of Formal Complaints - 1986

| | Employment | Services | Accommodations and Facilities | Total |
|---|---|---|---|---|
| Age | 9[a] | 3 | 1 | 13 |
| Ethnic Origin | 2 | | | 2 |
| Religion | 1 | | | 1 |
| Sex | 12 | | | 12 |
| Sexual Harassment | 11 | | | 11 |
| Marital Status | 2 | 3 | 1 | 6 |
| Physical Disability | 6 | 5 | 1 | 12 |
| Mental Disabliity | 1 | | | 1 |
| Political Belief | 107 | | | 107 |
| Association | 1 | | | 1 |
| Retaliation | 1 | | | 1 |
| TOTALS | 153 | 11 | 3 | 167 |

a. Four were mandatory retirement-related.

TABLE 2

A Ten-Year Review of Complaints

| Year | New Complaints | Complaints Carried Over from Previous Year | Total Number on File Each Year |
|---|---|---|---|
| 1976 | 2 | 0 | 2 |
| 1977 | 1 | 0 | 1 |
| 1978 | 9 | 0 | 9 |
| 1979 | 12 | 0 | 12 |
| 1980 | 16 | 4 | 20 |
| 1981 | 21 | 5 | 26 |
| 1982 | 23 | 8 | 31 |
| 1983 | 24 | 14 | 38 |
| 1984 | 28 | 14 | 42 |
| 1985 | 23 | 20 | 43 |
| 1986 | 137 | 30 | 167 |
| Total Complaints Received | 296 | | |

TABLE 3

A Ten-Year Review of Complaints by Category

| | Employment | Services | Accommodations and Facilities | Total |
|---|---|---|---|---|
| Age | 13 | 8 | | 21 |
| Mandatory Retirement | 5 | | | 5 |
| Race, Colour | 1 | 4 | | 5 |
| Ethnic/National Origin | 1 | 3 | 2 | 6 |
| Marital Status | 8 | 7 | 3 | 18 |
| Physical Disability | 23 | 9 | 2 | 34 |
| Mental Disability | 1 | | | 1 |
| Religion, Creed | 3 | | | 3 |
| Sex | 33 | 12 | 1 | 46 |
| Sexual Harassment | 21 | | | 21 |
| Political Belief | 124 | | | 124 |
| Equal Pay | 9 | | | 9 |
| Association | 2 | | | 2 |
| Retaliation for Having Filed a Complaint | 1 | | | 1 |
| TOTALS | 245 | 43 | 8 | 296 |

## TYPES OF COMPLAINTS

### 1. Boards of Inquiry Decisions

#### Gladys Kickham/City of Charlottetown

A board of inquiry confirmed the conclusion arrived at by the Human Rights Commission that the City of Charlottetown had discriminated against Ms. Kickham because of her sex when they failed to hire her as a police officer. The board concluded that the decision to change the scoring method was made because Ms. Kickham, a female, received the highest score in the competition and that the Chairman of the Hiring Committee, Alderman Squarebriggs, broke a tie vote involving Ms. Kickham and a male candidate by voting for the male candidate. The Board concluded that Alderman Squarebriggs was influenced in his voting by discriminatory objections to hiring a woman as a police officer which were raised by the police officials who were members of the Committee. Settlement included the offer to Ms. Kickham of a position as police constable, compensation for lost wages in the amount of $5,782.26 and payment to her of $3,000. in general damages for humiliation and loss of self-respect and to pay her interest on the lost wages and general damages in the amount of $893.16.

#### Marylou Roy/P. E. I. Nurses' Association

A Board of Inquiry was established by the Minister when the Human Rights Commission was unable to achieve a settlement between Marylou Roy and the Nurses' Association. In her complaint Marylou Roy alleged that she was discriminated against by the P. E. I. Nurses' Association when she was refused a temporary or permanent license to practice nursing in Prince Edward Island even though she had practised nursing in Canada for 16 years. She alleged she was denied permission because her nursing schooling and licensing were obtained in the Philippine Islands and that even though her schooling and licensing were recognized as equivalent to that obtained in Canada and the United States at the time of her recruitment by a Canadian hospital, her schooling and training were not recognized by the P. E. I. Nurses' Association. A settlement was reached with the Board of Inquiry prior to the convening of public hearings which was satisfactory to both Marylou Roy and the P. E. I. Nurses' Association.

Stephen Silliphant/Lunch Bar and Licensed Dining Room

A Board of Inquiry found that, while there may have been other reasons why the owner of the Lunch bar and Licensed Dining Room refused to employ Stephen Silliphant as a waiter, sex was the principal reason he was not considered for employment. The Board noted that the owner of the restaurant preferred females for waiting on tables. The Board recommended that Stephen Silliphant be paid $250. in general damages in compensation for the personal affront and inconvenience which this discrimination caused.

2. Complaints Settled by the Commission

Age/Mandatory Retirement/Employment

Two individuals filed complaints with the Commission when they were informed the Civil Service Act mandated their retirement at age 65. The Commission concluded that mandatory retirement at age 65 was a contravention of the Human Rights Act if chronological age rather than functional age was used as the criterion for imposing mandatory retirement on an employee. The Prince Edward Island Government agreed to allow the two individuals to remain working and issued a news release indicating age 65 would no longer be utilized by the Civil Service Commission in retiring civil servants.

Employment /Sex

Two high school males alleged they were terminated from their part-time jobs because the new manager preferred female employees. The Commission's investigation found no other valid reasons for their termination and conciliated a settlement whereby the two males received the wages they would have earned for the period for which they had been originally hired.

Physical Disability/Employment

A man filed a complaint with the Commission alleging he was not interviewed for a position because it was assumed he had a problem with alcohol. The Commission investigated the complaint and found no evidence indicating an alcohol problem. The Commission had established

a policy in 1982 that an inactive alcoholic or an indiviudal perceived to be an inactive alcoholic could not be denied employment because of a perceived history of alcoholism. A settlement was achieved consisting of a letter of apology and a guarantee that, should the man again apply for the position, he would be interviewed and judged solely on his abilities, experience and training. This settlement was sought by the man to clear his name and reputation.

Retaliation/Employment

A woman complained that she was not placed on a call list for casual and relief work because she had filed a complaint against a staff member in the past. The Commission found that the regular pattern for hiring for casual and relief work was not observed in only one case over the previous three years and it pertained to the woman who had filed a complaint with the Commission. A settlement was achieved and she was placed on the call list with the guarantee that she would have equal opportunity for employment with all others on the call list.

Marital Status/Access to a Facility

A female complained that she was denied access to a campground because she was single and the campground would only accept families, defining a family as a couple who were married or were living common-law. Human Rights law does not permit the categorization and classification of individuals by a prohibited category, attributing to all members of that category negative aspects of some individuals in that category. The Commission found it to be discriminatory and the complaint is currently in the process of settlement.

Employment/Age

A male complained that he was not hired for a seasonal job he had previously held because of his age. The Commission's investigation found that the position had been deleted from the list of seasonal jobs and, therefore, he was not discriminated against because of his age. The Commission, consequently, dismissed the complaint.

Sex/Employment

A woman complained that she was terminated from her job on the basis of sex. She alleged that, in determining the competence of the employees, she was evaluated and treated differently than the male employees and her employment was, therefore, terminated. The Commission investigated and concluded there was insufficient evidence to substantiate her complaint and dismissed the complaint.

## COMPLAINTS REFERRED TO THE CANADIAN HUMAN RIGHTS COMMISSION
## A TEN-YEAR REVIEW

Since its inception, the P. E. I. Human Rights Commission has accepted the responsibility of assisting individuals whose potential complaints fall within the jurisdiction of the Canadian Human Rights Commission to contact the Canadian Human Rights Commission's office in Halifax. These potential complaints relate to Employment and Immigration Canada, the Federal Civil Service, banks, airlines, CN, inter-provincial trucking, the ferry services and other federal services available to the public. Over the past ten years the Commission has referred 141 individuals to the Canadian Commission's office in Halifax.

## INQUIRIES FROM THE PUBLIC
## A TEN-YEAR REVIEW

The past decade has witnessed a rapidly increasing number of inquiries directed to the Commission by phone or through personal visits to the Commission's office. In 1979, the first year the Commission began keeping a daily log of such inquiries and visits, the Commission received approximately 121 such calls and visits. By 1985 the number of phone calls had become so numerous the Commission was compelled to install a second phone line. Currently, the Commission handles approximately 3000 phone inquiries and office visits per year. Many of these require additional calls from the Commission in its attempt to assist these individuals in finding the proper government department or agency to further pursue their complaints and problems. Many of these types of calls are time-consuming, but the Commission believes that providing informational assistance and intervention lies within the spirit of the Act. Many calls of this type are directed to the Commission because individuals believe some of their rights have been denied them and assume the Human Rights Commission is the agency responsible for protecting those rights. The majority of these inquiries could be handled by two agencies or services currently unavailable on the Island - an ombundsman and a civil legal aid service.

## EDUCATIONAL PRESENTATIONS
## A TEN-YEAR REVIEW

During 1986 the Commission's staff made 25 educational presentations, primarily to groups involved in Holland College classes designed to facilitate entry into the job market for women who have been out of the labour force for a period of time and for those young adults who require upgrading of their academic and skill levels before entering the job market competition.

Over the past decade the Commission has not possessed the staff capability of adequately fulfilling its mandated task of providing an education program in human rights to the citizens of Prince Edward Island. Areas of concern for the Commission in relation to its educational mandate are:

1. The production of human rights educational materials for distribution to the public;

2. The integration of human rights teaching into the school curriculum;

3. Seminars and presentations to various groups and organizations across the Island.

A repeated theme in each annual report of the Commission, beginning with the 1980 annual report, has been the recognition of the inadequacy of the educational program of the Commission and the remedy for addressing this inadequacy, namely, a third staff member whose primary responsibility would be the development of a comprehensive human rights educational program.

## PROJECTED GOALS FOR THE COMMISSION

As the Commission looks to the second decade of its existence, there are a number of objectives the Commission envisions as its primary goals.

### 1. A Review and Revision of the P. E. I. Human Rights Act

The Commission believes there is a requirement for an extensive review and revision of the P. E. I. Human Rights Act. The increasing complexity of human rights issues requires more definitive phrasing of proscribed grounds of discrimination. The rights and responsibilities of the Commission in investigating and settling of complaints also requires a detailed review in light of the enactment of the Canadian Charter of Rights and Freedoms. Experience with boards of inquiry has highlighted areas where changes to the Act may be required.

### 2. The Relocation of the Commission's Office

The Commission is currently working with the Government in a search for more adequate facilities in terms of space and accessibility for the disabled. While the current office location was adequate at the time it was made available to the Commission, the current space is inadequate for the increased workload of the Commission or for any future expansion of the Commission's staff.

### 3. The Development of an Educational Program

The educational mandate requires a thorough review in terms of what programs, materials and staffing can realistically be initiated and implemented by the Commission. The review must include a study of the need to revise, update and enhance the educational materials produced in 1980. Special materials to be developed will include those designed for employers in terms of employers' rights and responsibilities, a redrafting of materials relating to handicap, sex and age. In addition, extensive study in conjunction with the Department of Education should focus on the introduction of human rights materials into the school curriculum. And plans must be developed to define the role and function of a Human Rights Education Officer.

4. A Policy for Investigating Complaints

With the dramatic increase in the Commission's complaint caseload, it is essential that a training course be offered to the Commission's staff in investigative technique to provide more staff hours to the investigation of complaints. A more comprehensive policy in handling complaints more expeditiously is required. A review of the current handling of complaints and the development of a procedure to "fast handle" complaints will enable the Commission to handle complaints more quickly and prevent the carrying over of complaints into the following calendar year.

APPENDIX I

## A STATEMENT OF THE P. E. I. HUMAN RIGHTS COMMISSION ON ALCOHOLISM AS A FORM OF PHYSICAL DISABILITY

The P. E. I. Human Rights Commission has accepted alcoholism as a form of disability protected by the P. E. I. Human Rights Act. In the Act "physical disability" is described as any degree of disability or infirmity suffered as a result of injury, illness or birth defect.[1] The Commission has defined alcoholism as a form of disability suffered as the result of an illness and placed it into the same category as such chronic diseases as asthma, diabetes and high blood pressure.

The Annals of Internal Medicine describes alcoholism as a "chronic, progressive and potentially fatal disease."[2] It is considered a chronic disease for the following reasons:

1. It is irreversible; that is, it cannot be cured; it can only be treated.

2. It is a potentially terminal illness. If the alcoholic does not stop drinking, he/she will more likely die at an earlier age.

3. It is progressive and will not go away if left untreated.

The Commission has based its acceptance of alcoholism as an illness on the opinions of the following authorities:

1. The P. E. I. Addiction Services.
2. The P. E. I. Hospital and Health Services Commission.
3. The Canadian Employment and Immigration Department.
4. The Canadian Medical Association.
5. The Canadian Psychiatric Association.
6. The American Medical Association.

1. An Act to Amend the Human Rights Act (assented to April 18, 1980)
2. Annals of Internal Medicine, December 1976

7. The World Health Organization.

8. The U. S. National Council on Alcoholism.

9. The U. S. Internal Revenue Service (which permits medical deductions for treatment and travel to A.A. meetings).

10. A 1980 court decision in Seattle, Washington, in which the Court ruled that alcoholism is a disease and a handicap and consequently fell under the State's anti-discrimination laws. Therefore, an inactive alcoholic was protected by these laws.

In confronting the problem of alcoholism the Human Rights Commission has found it necessary to make two distinctions:

First, it distinguishes between the condition of alcoholism and the act of drinking.

Second, for its purposes in administering the Human Rights Act, the Commission distinguishes three types of alcoholism:

a. that of the Active Alcoholic, the individual who is addicted to alcohol and whose compulsive and repetitive use of alcohol interferes in any major area of his life including that of his work;

b. that of the Inactive Alcoholic, the individual who is remaining free of alcohol dependence (the Commission considers an individual to be an inactive alcoholic when his drinking habit has been completely broken, permitting the individual's physical and mental health, skills and job performance to return to an acceptable level);

c. that of the Recovering Alcoholic, the individual who is taking or has taken treatment, is following a prescribed rehabilitation course and is continuing to have his recovery monitored by a treatment centre or A.A. Also in the "recovering

alcoholic" category, the Commission would include the person seeking authorized absence from work for recognized medical treatment. Such a person is entitled to receive benefits and considerations similar to those granted for other illnesses in which absence from work is necessary for medical treatment or hospitalization.

Active alcoholics and individuals who either drink on the job or come to work incapacitated are not protected under the Human Rights Act. This means an employer has the right either to refuse to hire or to terminate the position of an individual if his/her drinking problem

1. adversely affects job performance and productivity;

2. causes unscheduled absences from work on a re-occurring basis or makes the individual habitually late for work;

3. adversely affects his/her own safety or the safety of co-workers and the public;

4. violates working rules or company regulations.

By placing the condition of alcoholism in the category of a disabling illness, the Commission is offering the protection of the Human Rights Act to both inactive and recovering acloholics. If an inactive alcoholic is denied a job based on his past alcohol record rather than on his job skills, training, aptitudes and experience, the Commission would accept a complaint from the individual under "physical disability."

As with other physical disabilities, the employer must attempt to make "reasonable accommodations" for a recovering alcoholic; that is, if there is a high degree of risk to the individual or others during the "recovery" period, an attempt must be made to find alternative employment until the employee clearly demonstrates he/she has become an inactive alcoholic.

In addition, the Commission is offering the protection of the Human Rights Act to those who wish to enter the P. E. I. Addiction Services Treatment Centre and become recovering alcoholics but are afraid they will lose their jobs if they do so.

The Commission has also extended the protection of the P. E. I. Human Rights Act to those inactive alcoholics who are being discriminated against in access to services, facilities and accommodations because of a past history of active alcoholism. Included in access to services is access to insurance, a service which is frequently denied an inactive alcoholic based not on his present condition but rather on a past condition.

It is the position of this Commission that the policy set forth here will contribute substantially to the elimination of acts directed against the rights of alcoholics in this Province.

P. E. I. Human Rights Commission

Allan F. MacDonald, Chairperson

Kenneth Birtwistle, Commissioner

Ruth MacLeod, Commissioner

October 20, 1982

APPENDIX II

RELEASE ..... March 1, 1984

Statement of the P. E. I. Human Rights Commission
Relative to Participation of Sexes in
Competitive Sports

We wish at this time to set forth the position of the P. E. I. Human Rights Commission regarding the application of the Human Rights Act to competitive sports in the province. Specifically, we are concerned here with the matter of sexual differentiation in competitive sports, and the application of the Human Rights Act to this differentiation. Because this matter falls within the public domain, the public has a right to know how the Human Rights Act relates to competitive sports at the amateur level.

We are offering these comments to advise the public on the requirements of the Human Rights Act in this regard, and so as to facilitate general compliance with the Act. The subject of sexual discrimination in competitive sports has received no little public attention of late as a result of the disposition by this Commission of complaints of this kind brought to it for adjudication.

We must point out first that our comments pertain only to children at the prepubescent age levels. All complaints were in this age category, and the Commission has restricted its decision to children in the prepubescent age groups where physiological characteristics are such that the sexes can compete with and against each other.

The Prince Edward Island Human Rights Act specifies that:

> "No person shall discriminate (a) against any individual or class of individuals with respect to enjoyment of accomodation, services and facilities to which members of the public have access". (Section 2 (a))

.../2

RELEASE ..... March 1, 1984

Minor hockey playoffs fall within the definition and meaning of "an access to a service and facility" of the Prince Edward Island Human Rights Act. The Human Rights Act specifies those activities and organizations which it intended to exempt from its jurisdiction. Amateur athletics were not so specified and must be interpreted as coming under the legislation.

Since amateur sports on P. E. I. falls under the jurisdiction of the P. E. I. Human Rights Act, rules and regulations of national associations are not involved in a determination of whether or not an act of discrimination has occured, and; the P. E. I. Human Rights Act takes precedence over all such rules and regulations applied at the provincial level.

Minor hockey playoffs are a "service and facility to which members of the public have access". What the Human Rights Act requires in this situation is that children not be denied an equal opportunity to participate in competitive sports at an appropriate skill level or age level. Specifically, the Act prohibits denial of an opportunity to participate in competitive hockey on the basis of sex.

The Act's requirement of equal opportunity to compete at the same skill level can be fulfilled either: (a) by separate organizations and teams for males and females; or (b) by sexually integrated teams. Neither one is mandated by the Act to the exclusion of the other.

What is mandated is that both males and females must not be excluded from an equal opportunity to participate in competitive sports on a level commensurate with their skills and physiological development.

The purpose of our provincial Human Rights Act is to extend and maximize individual opportunity and benefit in a context of the common good. The shaping of our organizations and institutions in the same spirit will make for the fulfillment of this purpose.

# STATEMENT OF THE P. E. I. HUMAN RIGHTS COMMISSION
## Relative to
## POLITICAL BELIEF AND THE P. E. I. HUMAN RIGHTS ACT

The P. E. I. Human Rights Commission wishes to address the application of the P. E. I. Human Rights Act to political belief. We do so at this time in response to the many inquiries and complaints made to the Commission on this matter.

The specific standards and guidelines utilized by the Commission to define political discrimination were first formulated in 1978 and have been reaffirmed by the Commission in the settlement of "political belief" complaints over the past eight years. From 1978 until April, 1986, this Commission has adjudicated twenty-four separate, formal complaints involving political belief based on these guidelines. In many of these complaints in which discrimination was found, a settlement was achieved.

The Human Rights Commission has defined political belief to include membership as well as participation or interest in a political party registered under Section 24 of the P. E. I. Elections Act. This means that any individual perceived to be a member of a registered political party; who works for or has engaged in party politics; or who manifests an interest in or sympathy for a party, its beliefs and tenets, is protected against discrimination under the "political belief" clause of the P. E. I. Human Rights Act.

The Commission has further defined "political belief" discrimination as occurring when

.... an individual is terminated from a position or job because of that individual's party affiliation;

.... an individual is not considered for a position or job because of his/her political party association or a preference for a particular political party;

.... an individual is not considered for a position or has his/her employment terminated to enable someone of a different political party affiliation to be employed in that position;

Seasonal, temporary and part-time employment are also protected by the Human Rights Act. Precedence for the protection in these types of employment was established in 1980 by an Ontario Board of Inquiry. The Board ruled that, while a part-time employee did not possess the right to expect continued employment indefinitely, that individual had the right not to be refused consideration for future employment for a discriminatory reason.

The same Board ruled, as have numerous other Boards of Inquiry and Court decisions, that the discriminatory reason need not be the only or even the most important reason for the failure to offer employment to an applicant. This Commission, consequently, has concluded that if party affiliation is one of the reasons an individual is not considered for seasonal, part-time, casual, temporary, or full-time employment, it is discrimination under the P. E. I. Human Rights Act. Any individual who believes he/she has been discriminated against, has the right to file a complaint with the Human Rights Commission.

The very spirit of the "political belief" clause suggests a further conclusion. This is that past party involvement, while it is not to be a basis for employment, is, nevertheless, not a valid reason for not appointing a person to a public position. It should not be assumed that a former party activist would allow political loyalties to influence his/her exercise of public office. Party affiliation, even one of intense involvement, should not be interpreted as an impediment to holding a position of public trust and to fulfilling that office for the common good. It would be unfair if active political and party participation,

certainly a public virtue, rendered an individual ineligible for public office.

The inclusion of political belief in 1976 in the Provincial Human Rights Act was a political decision of the highest quality. It implied the recognition that the basis of public hiring and employment was to be competence, not party affiliation. In one act it enshrined the primacy of fundamental rights: the right to work, the right to participate in the political process, and the right not to be discriminated against. It constituted an effort to eliminate the various forms of injustice resulting from political discrimination.

It is recognized by this Commission that violations of the "political belief" clause are not isolated acts but are incurred in a social context. This is a "culture of political patronage" -- a holdover from the past -- a life-style in which party-related hirings and firings are to some degree expected and accepted as standard procedure. As well, some people are not aware of the Human Rights legislation in this regard. As a result of these factors, no little pressure is placed upon elected representatives and others in positions of influence to act in violation of this legislation.

Why have these beliefs and expectations persisted a decade after the enactment of this legislation? Doubtless the answer is complex and varied. But, unquestionably, one of the factors is the failure of some members of all political parties to take this anti-discriminatory legislation seriously.

Out of respect for the rights of all our citizens and the integrity of our political system, this Commission appeals to all elected representatives, to members of the civil service, to party officials and workers to exercise leadership in making for the widespread observance of the law prohibiting political discrimination.

P. E. I. Human Rights Commission

Allan F. MacDonald, Chairperson

Ruth MacLeod, Commissioner

Richard Noonan, Commissioner

June 9, 1986